

ASSEMBLY BILL

No. 2729

Introduced by Assembly Member Ruskin

February 22, 2008

An act to amend Sections 25187, 25356.1, and 25390 of the Health and Safety Code, relating to the environment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2729, as introduced, Ruskin. Environment: hazardous materials: hazardous waste control: hazardous substances.

(1) Existing law requires the Secretary for Environmental Protection implement a unified hazardous waste and hazardous materials management regulatory program. Under existing law, a city or local agency that meets specified requirements is authorized to apply to the secretary to implement the unified program, and every county is required to apply to the secretary to be certified to implement the unified program. Existing law requires the Department of Toxic Substances Control or a unified program agency to enforce specified statutory provisions relating to hazardous waste and hazardous materials management and regulations adopted by the department to implement those standards.

Existing law authorizes the department or a unified program agency to issue an administrative enforcement order requiring that the violation be corrected and imposing an administrative penalty for a violation of specified statutory provisions or a permit, rule, regulation, standard, or requirement issued or adopted pursuant to those specified provisions. Existing law specifies procedures for the conduct of a hearing that is conducted upon the request of a person served with an order. Existing

law also imposes requirements regarding the payment of administrative penalties collected from enforcement actions.

This bill would make technical, nonsubstantive changes in those provisions.

(2) Existing law, the Carpenter-Presley-Tanner Hazardous Substance Account Act, among other things, requires the Department of Toxic Substances Control to adopt, by regulation, criteria for the selection of hazardous substance release sites for response actions and to publish and revise a listing of hazardous substance release sites selected for response actions, listed according to a specified order of priority.

The act requires the department or a California regional water quality control board to prepare and approve remedial action plans for all sites on the list and authorizes a potentially responsible party to request the department or the regional board to prepare or approve a remedial action plan for any site not listed, if the department or the regional board determines that a removal or remedial action is required to respond to a release of a hazardous substance. Existing law imposes various requirements regarding the content of a remedial action plan.

This bill would make technical, nonsubstantive changes in those provisions.

(3) Existing law establishes the Orphan Share Reimbursement Trust Fund to, among other things, encourage responsible parties to quickly and efficiently remediate contamination by hazardous substances.

Existing law defines various terms for purposes of administering the Orphan Share Reimbursement Trust Fund.

This bill would make a technical, nonsubstantive change in that provision.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 25187 of the Health and Safety Code is
- 2 amended to read:
- 3 25187. (a) (1) The department or a unified program agency,
- 4 in accordance with subdivision (l), may issue an order requiring
- 5 that the violation be corrected and imposing an administrative
- 6 penalty, for ~~any~~ a violation of this chapter or ~~any~~ a permit, rule,
- 7 regulation, standard, or requirement issued or adopted pursuant to
- 8 this chapter, whenever the department or Unified Program Agency

1 determines that a person has violated, is in violation of, or
2 threatens, as defined in subdivision (e) of Section 13304 of the
3 Water Code, to violate, this chapter or Chapter 6.8 (commencing
4 with Section 25300), or ~~any~~ a permit, rule, regulation, standard,
5 or requirement issued or adopted pursuant to this chapter or Chapter
6 6.8 (commencing with Section 25300).

7 (2) In an order proposing a penalty pursuant to this section, the
8 department or Unified Program Agency shall take into
9 consideration the nature, circumstances, extent, and gravity of the
10 violation, the violator's past and present efforts to prevent, abate,
11 or clean up conditions posing a threat to the public health or safety
12 or the environment, the violator's ability to pay the proposed
13 penalty, and the prophylactic effect that the imposition of the
14 proposed penalty would have on both the violator and the regulated
15 community as a whole.

16 (b) The department or a unified program agency, in accordance
17 with subdivision (l), may issue an order requiring corrective action
18 whenever the department or Unified Program Agency determines
19 that there is or has been a release, as defined in Chapter 6.8
20 (commencing with Section 25300), of hazardous waste or
21 constituents into the environment from a hazardous waste facility.

22 (1) In the case of a release of hazardous waste or constituents
23 into the environment from a hazardous waste facility that is
24 required to obtain a permit pursuant to Article 9 (commencing
25 with Section 25200), the department shall pursue the remedies
26 available under this chapter, including the issuance of an order for
27 corrective action pursuant to this section, before using the legal
28 remedies available pursuant to Chapter 6.8 (commencing with
29 Section 25300), except in any of the following circumstances:

30 (A) Where the person who is responsible for the release
31 voluntarily requests in writing that the department issue an order
32 to that person to take corrective action pursuant to Chapter 6.8
33 (commencing with Section 25300).

34 (B) Where the person who is responsible for the release is unable
35 to pay for the cost of corrective action to address the release. For
36 purposes of this subparagraph, the inability of a person to pay for
37 the cost of corrective action shall be determined in accordance
38 with the policies of the Environmental Protection Agency for the
39 implementation of Section 9605 of Title 42 of the United States
40 Code.

1 (C) Where the person responsible for the release is unwilling
2 to perform corrective action to address the release. For purposes
3 of this subparagraph, the unwillingness of a person to take
4 corrective action shall be determined in accordance with the
5 policies of the Environmental Protection Agency for the
6 implementation of Section 9605 of Title 42 of the United States
7 Code.

8 (D) Where the release is part of a regional or multisite
9 groundwater contamination problem that cannot, in its entirety,
10 be addressed using the legal remedies available pursuant to this
11 chapter and for which other releases that are part of the regional
12 or multisite groundwater contamination problem are being
13 addressed using the legal remedies available pursuant to Chapter
14 6.8 (commencing with Section 25300).

15 (E) Where an order for corrective action has ~~already~~ been issued
16 against the person responsible for the release, or the department
17 and the person responsible for the release have, prior to January
18 1, 1996, entered into an agreement to address the required cleanup
19 of the release pursuant to Chapter 6.8 (commencing with Section
20 25300).

21 (F) Where the hazardous waste facility is owned or operated by
22 the federal government.

23 (2) The order shall include a requirement that the person take
24 corrective action with respect to the release of hazardous waste or
25 constituents, abate the effects thereof, and take any other necessary
26 remedial action.

27 (3) If the order requires corrective action at a hazardous waste
28 facility, the order shall require that corrective action be taken
29 beyond the facility boundary, where necessary to protect human
30 health or the environment.

31 (4) The order shall incorporate, as a condition of the order, any
32 applicable waste discharge requirements issued by the State Water
33 Resources Control Board or a California regional water quality
34 control board, and shall be consistent with all applicable water
35 quality control plans adopted pursuant to Section 13170 of the
36 Water Code and Article 3 (commencing with Section 13240) of
37 Chapter 4 of Division 7 of the Water Code and state policies for
38 water quality control adopted pursuant to Article 3 (commencing
39 with Section 13140) of Chapter 3 of Division 7 of the Water Code
40 existing at the time of the issuance of the order, to the extent that

1 the department or Unified Program Agency determines that those
2 plans and policies are not less stringent than this chapter and
3 regulations adopted pursuant to this chapter. The order may include
4 ~~any~~ a more stringent requirement that the department or Unified
5 Program Agency determines is necessary or appropriate to protect
6 water quality.

7 (5) Persons who are subject to an order pursuant to this
8 subdivision include present and prior owners, lessees, or operators
9 of the property where the hazardous waste is located, present or
10 past generators, storers, treaters, transporters, disposers, and
11 handlers of hazardous waste, and persons who arrange, or have
12 arranged, by contract or other agreement, to store, treat, transport,
13 dispose of, or otherwise handle hazardous waste.

14 (6) For purposes of this subdivision, “hazardous waste facility”
15 includes the entire site that is under the control of an owner or
16 operator engaged in the management of hazardous waste.

17 (c) ~~Any~~ An order issued pursuant to this section shall be served
18 by personal service or certified mail and shall inform the person
19 so served of the right to a hearing. If the Unified Program Agency
20 issues the order pursuant to this section, the order shall state
21 whether the hearing procedure specified in paragraph (2) of
22 subdivision (f) may be requested by the person receiving the order.

23 (d) ~~Any~~ A person served with an order pursuant to this section
24 who has been unable to resolve any violation or deficiency on an
25 informal basis with the department or Unified Program Agency
26 may, within 15 days after service of the order, request a hearing
27 pursuant to subdivision (e) or (f) by filing with the department or
28 Unified Program Agency a notice of defense. The notice shall be
29 filed with the office that issued the order. A notice of defense shall
30 be deemed filed within the 15-day period provided by this
31 subdivision if it is postmarked within that 15-day period. If ~~no~~ a
32 notice of defense is *not* filed within the time limits provided by
33 this subdivision, the order shall become final.

34 (e) ~~Any~~ A hearing requested on an order issued by the
35 department shall be conducted within 90 days after receipt of the
36 notice of defense by an administrative law judge of the Office of
37 Administrative Hearings of the Department of General Services
38 in accordance with Chapter 4.5 (commencing with Section 11400)
39 of Part 1 of Division 3 of Title 2 of the Government Code, and the

1 department shall have all the authority granted to an agency by
2 those provisions.

3 (f) Except as provided in subparagraph (B) of paragraph (2), a
4 person requesting a hearing on an order issued by a unified program
5 agency may select the hearing process specified in either paragraph
6 (1) or (2) in the notice of defense filed with the Unified Program
7 Agency pursuant to subdivision (d). Within 90 days of receipt of
8 the notice of defense by the Unified Program Agency, the hearing
9 shall be conducted using one of the following procedures:

10 (1) An administrative law judge of the Office of Administrative
11 Hearings of the Department of General Services shall conduct the
12 hearing in accordance with Chapter 4.5 (commencing with Section
13 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

14 (2) (A) A hearing officer designated by the Unified Program
15 Agency shall conduct the hearing in accordance with Chapter 4.5
16 (commencing with Section 11400) of Part 1 of Division 3 of Title
17 2 of the Government Code, and the Unified Program Agency shall
18 have all the authority granted to an agency by those provisions.
19 When a hearing is conducted by a unified program agency pursuant
20 to this paragraph, the Unified Program Agency shall, within 60
21 days of the hearing, issue a decision.

22 (B) A person requesting a hearing on an order issued by a unified
23 program agency may select the hearing process specified in this
24 paragraph in a notice of defense filed pursuant to subdivision (d)
25 only if the Unified Program Agency has, as of the date the order
26 is issued pursuant to subdivision (c), selected a designated hearing
27 officer and established a program for conducting a hearing in
28 accordance with this paragraph.

29 (g) The hearing decision issued pursuant to subdivision (f) shall
30 be effective and final upon issuance. Copies of the decision shall
31 be served by personal service or by certified mail upon the party
32 served with the order and upon other persons who appeared at the
33 hearing and requested a copy.

34 (h) ~~Any~~ A provision of an order issued under this section, except
35 the imposition of an administrative penalty, shall take effect upon
36 issuance by the department or Unified Program Agency if the
37 department or Unified Program Agency finds that the violation or
38 violations of law associated with that provision may pose an
39 imminent and substantial endangerment to the public health or
40 safety or the environment, and a request for a hearing shall not

1 stay the effect of that provision of the order pending a hearing
2 decision. However, if the department or Unified Program Agency
3 determines that any or all provisions of the order are so related
4 that the public health or safety or the environment can be protected
5 only by immediate compliance with the order as a whole, then the
6 order as a whole, except the imposition of an administrative
7 penalty, shall take effect upon issuance by the department or
8 Unified Program Agency. A request for a hearing shall not stay
9 the effect of the order as a whole pending a hearing decision.

10 (i) A decision issued pursuant to this section may be reviewed
11 by the court pursuant to Section 11523 of the Government Code.
12 In all proceedings pursuant to this section, the court shall uphold
13 the decision of the department or Unified Program Agency if the
14 decision is based upon substantial evidence in the whole record.
15 The filing of a petition for writ of mandate shall not stay any action
16 required pursuant to this chapter or the accrual of any penalties
17 assessed pursuant to this chapter. This subdivision does not prohibit
18 the court from granting any appropriate relief within its jurisdiction.

19 (j) All administrative penalties collected from actions brought
20 by the department pursuant to this section shall be placed in a
21 separate subaccount in the Toxic Substances Control Account and
22 shall be available only for transfer to the Site Remediation Account
23 or the Expedited Site Remediation Trust Fund and for expenditure
24 by the department upon appropriation by the Legislature.

25 (k) All administrative penalties collected from an action brought
26 by a unified program agency pursuant to this section shall be paid
27 to the Unified Program Agency that imposed the penalty, and shall
28 be deposited into a special account that shall be expended to fund
29 the activities of the Unified Program Agency in enforcing this
30 chapter pursuant to Section 25180.

31 (l) The authority granted under this section to a unified program
32 agency is limited to both of the following:

33 (1) The issuance of orders to impose penalties and to correct
34 violations of the requirements of this chapter and its implementing
35 regulations, only when the violations are violations of requirements
36 applicable to hazardous waste generators and persons operating
37 pursuant to a permit-by-rule, conditional authorization, or
38 conditional exemption, when the violations occur at a unified
39 program facility within the jurisdiction of the CUPA.

1 (2) The issuance of orders to require corrective action when
2 there has been a release of hazardous waste or constituents only
3 when the Unified Program Agency is authorized to do so pursuant
4 to Section 25404.1.

5 (m) The CUPA shall annually submit a summary report to the
6 department on the status of orders issued by the unified program
7 agencies under this section and Section 25187.1.

8 (n) The CUPA shall consult with the district attorney for the
9 county on the development of policies to be followed in exercising
10 the authority delegated pursuant to this section and Section
11 25187.1, as they relate to the authority of unified program agencies
12 to issue orders.

13 (o) The CUPA shall arrange to have appropriate legal
14 representation in administrative hearings that are conducted by an
15 administrative law judge of the Office of Administrative Hearings
16 of the Department of General Services, and when a decision issued
17 pursuant to this section is appealed to the superior court.

18 (p) The department may adopt regulations to implement this
19 section and paragraph (2) of subdivision (a) of Section 25187.1 as
20 they relate to the authority of unified program agencies to issue
21 orders. The regulations shall include, but not be limited to, all of
22 the following requirements:

23 (1) Provisions to ensure coordinated and consistent application
24 of this section and Section 25187.1 when both the department and
25 the Unified Program Agency have or will be issuing orders under
26 one or both of these sections at the same facility.

27 (2) Provisions to ensure that the enforcement authority granted
28 to the unified program agencies will be exercised consistently
29 throughout the state.

30 (3) Minimum training requirements for staff of the Unified
31 Program Agency relative to this section and Section 25187.1.

32 (4) Procedures to be followed by the department to rescind the
33 authority granted to a unified program agency under this section
34 and Section 25187.1, if the department finds that the Unified
35 Program Agency is not exercising that authority in a manner
36 consistent with this chapter and Chapter 6.11 (commencing with
37 Section 25404) and the regulations adopted pursuant thereto.

38 (q) Except for an enforcement action taken pursuant to this
39 chapter or Chapter 6.8 (commencing with Section 25300), this

1 section does not otherwise affect the authority of a local agency
2 to take any action under any other provision of law.

3 SEC. 2. Section 25356.1 of the Health and Safety Code is
4 amended to read:

5 25356.1. (a) For purposes of this section, “regional board”
6 means a California regional water quality control board and “state
7 board” means the State Water Resources Control Board.

8 (b) Except as provided in subdivision (h), the department, or,
9 if appropriate, the regional board shall prepare or approve remedial
10 action plans for ~~all~~ *the* sites listed pursuant to Section 25356.

11 (c) A potentially responsible party may request the department
12 or the regional board, when appropriate, to prepare or approve a
13 remedial action plan for ~~any~~ *a* site not listed pursuant to Section
14 25356, if the department or the regional board determines that a
15 removal or remedial action is required to respond to a release of
16 a hazardous substance. The department or the regional board shall
17 respond to a request to prepare or approve a remedial action plan
18 within 90 days of receipt. This subdivision does not affect the
19 authority of ~~any~~ *a* regional board to issue and enforce a cleanup
20 and abatement order pursuant to Section 13304 of the Water Code
21 or a cease and desist order pursuant to Section 13301 of the Water
22 Code.

23 (d) All remedial action plans prepared or approved pursuant to
24 this section shall be based upon Section 25350, Subpart E of the
25 National Oil and Hazardous Substances Pollution Contingency
26 Plan (40 C.F.R. 300.400 et seq.), and any amendments thereto,
27 and upon all of the following factors, to the extent that these factors
28 are consistent with these federal regulations and do not require a
29 less stringent level of cleanup than these federal regulations:

30 (1) Health and safety risks posed by the conditions at the site.
31 When considering these risks, the department or the regional board
32 shall consider scientific data and reports which may have a
33 relationship to the site.

34 (2) The effect of contamination or pollution levels upon present,
35 future, and probable beneficial uses of contaminated, polluted, or
36 threatened resources.

37 (3) The effect of alternative remedial action measures on the
38 reasonable availability of groundwater resources for present, future,
39 and probable beneficial uses. The department or the regional board
40 shall consider the extent to which remedial action measures are

1 available that use, as a principal element, treatment that
2 significantly reduces the volume, toxicity, or mobility of the
3 hazardous substances, as opposed to remedial actions that do not
4 use this treatment. The department or the regional board shall not
5 select remedial action measures which use offsite transport and
6 disposal of untreated hazardous substances or contaminated
7 materials if practical and cost-effective treatment technologies are
8 available.

9 (4) Site-specific characteristics, including the potential for offsite
10 migration of hazardous substances, the surface or subsurface soil,
11 and the hydrogeologic conditions, as well as preexisting
12 background contamination levels.

13 (5) Cost-effectiveness of alternative remedial action measures.
14 In evaluating the cost-effectiveness of proposed alternative
15 remedial action measures, the department or the regional board
16 shall consider, to the extent possible, the total short-term and
17 long-term costs of these actions and shall use, as a major factor,
18 whether the deferral of a remedial action will result, or is likely to
19 result, in a rapid increase in cost or in the hazard to public health
20 or the environment posed by the site. Land disposal shall not be
21 deemed the most cost-effective measure merely on the basis of
22 lower short-term cost.

23 (6) The potential environmental impacts of alternative remedial
24 action measures, including, but not limited to, land disposal of the
25 untreated hazardous substances as opposed to treatment of the
26 hazardous substances to remove or reduce its volume, toxicity, or
27 mobility prior to disposal.

28 (e) A remedial action plan prepared pursuant to this section
29 shall include the basis for the remedial action selected and shall
30 include an evaluation of each alternative considered and rejected
31 by the department or the regional board for a particular site. The
32 plan shall include an explanation for rejection of alternative
33 remedial actions considered but rejected. The plan shall also
34 include an evaluation of the consistency of the selected remedial
35 action with the requirements of the federal regulations and the
36 factors specified in subdivision (d), if those factors are not
37 otherwise adequately addressed through compliance with the
38 federal regulations. The remedial action plan shall also include a
39 nonbinding preliminary allocation of responsibility among all
40 identifiable potentially responsible parties at a particular site,

1 including those parties which may have been released, or may
2 otherwise be immune, from liability pursuant to this chapter or
3 any other provision of law. Before adopting a final remedial action
4 plan, the department or the regional board shall prepare or approve
5 a draft remedial action plan and shall do all of the following:

6 (1) Circulate the draft plan for at least 30 days for public
7 comment.

8 (2) Notify affected local and state agencies of the removal and
9 remedial actions proposed in the remedial action plan and publish
10 a notice in a newspaper of general circulation in the area affected
11 by the draft remedial action plan. The department or the regional
12 board shall also post notices in the location where the proposed
13 removal or remedial action would be located and shall notify, by
14 direct mailing, the owners of property contiguous to the site
15 addressed by the plan, as shown in the latest equalized assessment
16 roll.

17 (3) Hold one or more meetings with the lead and responsible
18 agencies for the removal and remedial actions, the potentially
19 responsible parties for the removal and remedial actions, and the
20 interested public, to provide the public with the information which
21 is necessary to address the issues which concern the public. The
22 information to be provided shall include an assessment of the
23 degree of contamination, the characteristics of the hazardous
24 substances, an estimate of the time required to carry out the
25 removal and remedial actions, and a description of the proposed
26 removal and remedial actions.

27 (4) Comply with Section 25358.7.

28 (f) After complying with subdivision (e), the department or the
29 regional board shall review and consider any public comments,
30 and shall revise the draft plan, if appropriate. The department or
31 the regional board shall then issue the final remedial action plan.

32 (g) (1) A potentially responsible party named in the final
33 remedial action plan issued by the department or the regional board
34 may seek judicial review of the final remedial action plan by filing
35 a petition for writ of mandate pursuant to Section 1085 of the Code
36 of Civil Procedure within 30 days after the final remedial action
37 plan is issued by the department or the regional board. Any other
38 person who has the right to seek judicial review of the final
39 remedial action plan by filing a petition for writ of mandate
40 pursuant to Section 1085 of the Code of Civil Procedure shall do

1 so within one year after the final remedial action plan is issued.
2 No action may be brought by a potentially responsible party to
3 review the final remedial action plan if the petition for writ of
4 mandate is not filed within 30 days of the date that the final
5 remedial action plan was issued. No action may be brought by any
6 other person to review the final remedial action plan if the petition
7 for writ of mandate is not filed within one year of the date that the
8 final remedial action plan was issued. The filing of a petition for
9 writ of mandate to review the final remedial action plan shall not
10 stay any removal or remedial action specified in the final plan.

11 (2) For purposes of judicial review, the court shall uphold the
12 final remedial action plan if the plan is based upon substantial
13 evidence available to the department or the regional board, as the
14 case may be.

15 (3) This subdivision does not prohibit the court from granting
16 any appropriate relief within its jurisdiction, including, but not
17 limited to, enjoining the expenditure of funds pursuant to paragraph
18 (2) of subdivision (b) of Section 25385.6.

19 (h) (1) This section does not require the department or a regional
20 board to prepare a remedial action plan if conditions present at a
21 site present an imminent or substantial endangerment to the public
22 health and safety or to the environment or, if the department, a
23 regional board, or a responsible party takes a removal action at a
24 site and the estimated cost of the removal action is less than one
25 million dollars (\$1,000,000). The department or a regional board
26 shall prepare or approve a removal action workplan for all sites
27 where a nonemergency removal action is proposed and where a
28 remedial action plan is not required. For sites where removal
29 actions are planned and are projected to cost less than one million
30 dollars (\$1,000,000), the department or a regional board shall make
31 the local community aware of the hazardous substance release site
32 and shall prepare, or direct the parties responsible for the removal
33 action to prepare, a community profile report to determine the level
34 of public interest in the removal action. Based on the level of
35 expressed interest, the department or regional board shall take
36 appropriate action to keep the community informed of project
37 activity and to provide opportunities for public comment which
38 may include conducting a public meeting on proposed removal
39 actions.

(2) A remedial action plan is not required pursuant to subdivision (b) if the site is listed on the National Priority List by the Environmental Protection Agency pursuant to the federal act, if the department or the regional board concurs with the remedy selected by the Environmental Protection Agency's record of decision. The department or the regional board may sign the record of decision issued by the Environmental Protection Agency if the department or the regional board concurs with the remedy selected.

(3) The department may waive the requirement that a remedial action plan meet the requirements specified in subdivision (d) if all of the following apply:

(A) The responsible party adequately characterizes the hazardous substance conditions at a site listed pursuant to Section 25356.

(B) The responsible party submits to the department, in a form acceptable to the department, all of the following:

(i) A description of the techniques and methods to be employed in excavating, storing, handling, transporting, treating, and disposing of materials from the site.

(ii) A listing of the alternative remedial measures which were considered by the responsible party in selecting the proposed removal action.

(iii) A description of methods that will be employed during the removal action to ensure the health and safety of workers and the public during the removal action.

(iv) A description of prior removal actions with similar hazardous substances and with similar public safety and environmental considerations.

(C) The department determines that the remedial action plan provides protection of human health and safety and for the environment at least equivalent to that which would be provided by a remedial action plan prepared in accordance with subdivision (c).

(D) The total cost of the removal action is less than two million dollars (\$2,000,000).

(4) For purposes of this section, the cost of a removal action includes the cleanup of removal of released hazardous substances from the environment or the taking of other actions that are necessary to prevent, minimize, or mitigate damage that may otherwise result from a release or threatened release, as further defined by Section 9601 (23) of Title 42 of the United States Code.

(5) Paragraph (2) of this subdivision does not apply to a removal action paid from the state account.

(i) Article 2 (commencing with Section 13320), Article 3 (commencing with Section 13330), Article 5 (commencing with Section 13350), and Article 6 (commencing with Section 13360) of Chapter 5 of Division 7 of the Water Code apply to ~~any~~ *an* action or failure to act by a regional board pursuant to this section.

SEC. 3. Section 25390 of the Health and Safety Code is amended to read:

25390. For purposes of this article, the following definitions shall apply:

(a) “Fund” means the Orphan Share Reimbursement Trust Fund established pursuant to Section 25390.3.

(b) “Orphan share” means the share of liability for the costs of response action ~~that is~~ attributable to the activities of persons who are defunct or insolvent, as determined pursuant to Section 25390.5.